

The Honorable John C. Coughenour

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ALYSON HERFERT, TALANA WILEY,)	
SHANNON GORDNER, KATHRYN DE	)	No. 2:11-cv-1301-JCC
PEUTER, BECKY KUHL, ALANNA)	
WASKO, and DENIZ ZOELLER, on behalf of	)	JOINT REPLY ON JOINT MOTION TO
themselves and all others similarly situated,	)	REQUIRE ATTORNEYS DARRELL
	)	PALMER, CHRISTOPHER BANDAS
Plaintiffs,	)	AND OBJECTOR AMBER PEDERSON
	)	TO POST APPEAL BOND, AND
v.	)	SEEKING ANY OTHER APPROPRIATE
	)	RELIEF TO PROTECT THE CLASS
CRAYOLA LLC,)	
	)	ORAL ARGUMENT REQUESTED
Defendant.)	
	)	NOTE ON MOTION CALENDAR:
	)	JULY 6, 2012

The parties have crafted a settlement that provides complete and immediate relief to the Class. The parties respect the right of legitimate objectors, but given the strength of this settlement, an appeal bond is appropriate to protect the Class from the single objector who stands in the way of relief for millions of Class Members.

In her late-filed opposing brief, Ms. Pederson correctly cites *Azizian v. Federated Department Stores*, 499 F.3d 950 (9th Cir. 2007), but she draws the wrong lesson from that case. *Azizian* joins the “majority rule” in holding that “a district court may order security for

1 appellate attorney's fees in a Rule 7 bond if they would be treated as recoverable costs under
 2 an applicable fee-shifting statute." 499 F.3d at 955. As the Ninth Circuit held in *Azizian*, "The
 3 . . . majority rule, adopted by the Second, Sixth, and Eleventh Circuits, holds that a district
 4 court may order security for appellate attorney's fees in a Rule 7 bond if they would be treated
 5 as recoverable costs under an applicable fee-shifting statute." *Id.* (citations omitted).
 6 Accordingly, under this rule where Plaintiffs have sued under UDAP statutes, as here, the
 7 Court has discretion to determine an appropriate appeals bond. *See, e.g.*, RCW 19.86.090 (fee
 8 shifting statute of Washington CPA, which describes attorneys' fees as costs recoverable by
 9 injured parties, as defined in the statute).

10 The Objector's attorney claims, without a supporting declaration, that Ms. Pederson
 11 cannot post a \$20,000 bond. Given the strength of the settlement and Ms. Pederson's
 12 counsels' poor track record, *see* Declaration of Kathy A. Cochran attached hereto (listing
 13 numerous cases in which Mr. Palmer has filed meritless appeals), and *see also* Exhibit 1
 14 attached to Docket 57, the parties request an appeal bond in an amount the Court finds
 15 appropriate, and would be happy to appear if it would be helpful to the Court.

DATED this 6th day of July, 2012.

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CERTIFICATE OF SERVICE

I certify that on this 6th day of July, 2012, I electronically filed the foregoing documents with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all parties or their counsel.

I also certify that I on July 6, 2012, I caused a true and correct copy of the foregoing to be sent via overnight delivery to the following:

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s/ Traci Jay
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